

LEGISLATIVE BILL 366

Approved by the Governor March 17, 1999

Introduced by Suttle, 10

AN ACT relating to the practice of psychology; to amend sections 43-129, 43-146.03, 71-1,206.01, 71-1,206.13, 71-1,206.14, 71-1,206.25, 71-1,206.27, 71-1,206.28, and 71-1,206.29, Reissue Revised Statutes of Nebraska, and sections 71-101, 71-147, and 71-1,103, Revised Statutes Supplement, 1998; to provide for a provisional license; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. A person who needs to obtain the required one year of supervised postdoctoral experience in psychology pursuant to subdivision (2) of section 71-1,206.15 shall obtain a provisional license to practice psychology. An applicant for a provisional license to practice psychology shall:

(1) Have a doctoral degree from an institution of higher education in a program of graduate study in professional psychology that meets the standards of accreditation adopted by the American Psychological Association or its equivalent. If the program is not accredited by the American Psychological Association, it is the responsibility of the applicant to provide evidence of equivalence. Any applicant from a program that does not meet such standards shall present a certificate of retraining from a program of respecialization that does meet such standards;

(2) Have completed one year of supervised professional experience in an internship as provided in subdivision (2) of section 71-1,206.15;

(3)(a) Apply within sixty days after the effective date of this act if the applicant is then in the year of registered supervised postdoctoral experience on such date; or

(b) Apply at any time after the effective date of this act but prior to beginning the year of registered supervised postdoctoral experience if the applicant is not in such year on such date;

(4) Be of good moral character; and

(5) Submit to the department:

(a) A verified complete application on a form provided by the department;

(b) An official transcript showing proof of a doctoral degree in psychology from an institution of higher education;

(c) A certified copy of the applicant's birth certificate or other evidence of having attained the age of majority;

(d) A registration of supervisory relationship pursuant to subdivision (1) of section 71-1,206.18; and

(e) The required provisional license fee as established by the department.

Sec. 2. The department shall approve or deny a complete application for a provisional license to practice psychology within one hundred fifty days after receipt of the application.

Sec. 3. A psychologist practicing with a provisional license shall use the title Provisionally Licensed Psychologist. A provisionally licensed psychologist shall disclose supervisory relationships to clients or patients for whom supervision is required and to third parties when relevant. A provisionally licensed psychologist shall not supervise other mental health professionals or independently evaluate persons under the Nebraska Mental Health Commitment Act.

Sec. 4. A provisional license to practice psychology expires upon receipt of a license to practice psychology or two years after the date of issuance, whichever occurs first.

Sec. 5. Section 43-129, Reissue Revised Statutes of Nebraska, is amended to read:

43-129. If at any time an individual licensed to practice medicine and surgery pursuant to sections 71-1,102 to 71-1,107.14 or licensed to engage in the practice of psychology pursuant to sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the information contained on the original birth certificate, and the court may

release the information on good cause shown.

Sec. 6. Section 43-146.03, Reissue Revised Statutes of Nebraska, is amended to read:

43-146.03. If at any time an individual licensed to practice medicine and surgery pursuant to sections 71-1,102 to 71-1,107.14 or licensed to engage in the practice of psychology pursuant to sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the information contained on the original birth certificate, and the court may release the information on good cause shown.

Sec. 7. Section 71-101, Revised Statutes Supplement, 1998, is amended to read:

71-101. Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1301 to 71-1354, and 71-2801 to 71-2822 and sections 1 to 4 of this act shall be known and may be cited as the Uniform Licensing Law.

For purposes of the Uniform Licensing Law, unless the context otherwise requires:

(1) Board of examiners or board shall mean one of the boards appointed by the State Board of Health;

(2) Licensed, when applied to any licensee in any of the professions named in section 71-102, shall mean a person licensed under the Uniform Licensing Law;

(3) Profession or health profession shall mean and refer to any of the several groups named in section 71-102;

(4) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(5) Whenever a particular gender is used, it shall be construed to include both the masculine and the feminine, and the singular number shall include the plural when consistent with the intent of the Uniform Licensing Law;

(6) License, licensing, or licensure shall mean permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title;

(7) Certificate, certify, or certification, with respect to professions, shall mean a voluntary process by which a statutory, regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use the word certified in the title or designation to perform prescribed health professional tasks. When appropriate, certificate shall also mean a document issued by the department which designates particular credentials for an individual; and

(8) Lapse shall mean the termination of the right or privilege to represent oneself as a licensed, certified, or registered person and to practice the profession when a license, certificate, or registration is required to do so.

Sec. 8. Section 71-147, Revised Statutes Supplement, 1998, is amended to read:

71-147. A license, certificate, or registration to practice a profession may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 71-155 when the applicant, licensee, certificate holder, or registrant is guilty of any of the following acts or offenses:

(1) Fraud, forgery, or misrepresentation of material facts in procuring or attempting to procure a license, certificate, or registration;

(2) Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state;

(3) Habitual intoxication or active dependency on or addiction to the use of alcohol or habituation or active dependency on or addiction to the use of any kind of controlled substance or narcotic drug or failure to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program established pursuant to section 71-172.01;

(4) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the applicant's, licensee's, certificate holder's, or registrant's fitness or capacity to practice the profession;

(5) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with manifest incapacity, (d) with gross incompetence or gross negligence, or (e) in a pattern of negligent conduct. Pattern of negligent conduct shall mean a continued course of negligent conduct in performing the duties of the profession;

(6) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability;

(7) Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means;

(8) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license, certificate, or registration by a person not licensed, certified, or registered to do so;

(9) Having had his or her license, certificate, or registration denied, refused renewal, limited, suspended, or revoked or having had such license, certificate, or registration disciplined in any other manner in accordance with section 71-155 by another state or jurisdiction to practice the particular profession involved, based upon acts by the applicant, licensee, certificate holder, or registrant similar to acts described in this section. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence;

(10) Unprofessional conduct;

(11) Use of untruthful or improbable statements or flamboyant, exaggerated, or extravagant claims, concerning such licensee's, certificate holder's, or registrant's professional excellence or abilities, in advertisements;

(12) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(13) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(14) Willful or repeated violations of the Uniform Licensing Law or the rules and regulations of the department relating to the licensee's, certificate holder's, or registrant's profession, sanitation, quarantine, or school inspection;

(15) Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the licensee, certificate holder, or registrant is not licensed, certified, or registered to practice;

(16) Failure to comply with sections 71-604, 71-605, and 71-606 relating to the signing of birth and death certificates;

(17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(18) Purchasing or receiving any prescription drug from any source in violation of the Wholesale Drug Distributor Licensing Act;

(19) Violation of the Emergency Box Drug Act;

(20) Failure to file a report required by section 71-168;

(21) Failure to disclose the information required by section 71-1,314.01; ~~or~~

(22) Failure to disclose the information required by section 71-1,319.01; or

(23) Failure to disclose the information required by section 3 of this act.

A license, certificate, or registration to practice a profession may also be refused renewal or revoked when the licensee, certificate holder, or registrant is guilty of practicing such profession while his or her license, certificate, or registration to do so is suspended or is guilty of practicing such profession in contravention of any limitation placed upon his or her license, certificate, or registration.

This section shall not apply to revocation for nonrenewal as set out in section 71-110, subsection (1) of section 71-149, and section 71-161.10.

Sec. 9. Section 71-1,103, Revised Statutes Supplement, 1998, is amended to read:

71-1,103. The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

(1) Persons rendering gratuitous services in cases of emergency;

(2) Persons administering ordinary household remedies;

(3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians or surgeons, and such members shall not be exempt from

the quarantine laws of this state;

(4) Students of medicine and surgery who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;

(5) Physicians and surgeons of the United States Armed Forces or Public Health Service or United States Department of Veterans Affairs when acting in the line of such duty in this state;

(6) Physicians and surgeons who are graduates of an accredited school or college of medicine with the degree of Doctor of Medicine and licensed in another state when incidentally called into this state for consultation with a physician and surgeon licensed in this state;

(7) Physicians and surgeons who are graduates of an accredited school or college of medicine with the degree of Doctor of Medicine and who reside in a state bordering this state and who are duly licensed under the laws thereof to practice medicine and surgery but who do not open an office or maintain or appoint a place to meet patients or to receive calls within this state unless they are performing services described in subdivision (7) of section 71-1,102;

(8) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a doctor of medicine licensed to practice while working under the direction of such physician;

(9) Dentists practicing their profession when licensed and practicing in accordance with sections 71-183 to 71-191;

(10) Optometrists practicing their profession when licensed and practicing under and in accordance with sections 71-1,133 to 71-1,136;

(11) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 71-1,137 and 71-1,141;

(12) Chiropractors practicing their profession if licensed and practicing under sections 71-177 to 71-182;

(13) Podiatrists practicing their profession when licensed and practicing under and in accordance with sections 71-173 to 71-176;

(14) Psychologists practicing their profession when licensed and practicing under and in accordance with sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act;

(15) Advanced registered nurse practitioners and certified registered nurse anesthetists practicing their profession when licensed and practicing under and in accordance with the Advanced Registered Nurse Practitioner Act;

(16) Any person licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;

(17) Physicians and surgeons who are duly licensed to practice medicine and surgery in another state who have been recommended by the secretary of the board of examiners in the state of licensure and who have been granted temporary practice rights by the Board of Examiners in Medicine and Surgery, with the approval of the Department of Health and Human Services Regulation and Licensure, for a period not to exceed three months in any twelve-month period;

(18) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens; and

(19) Any other trained person employed by a licensed institution or facility which is defined in section 71-2017.01 or clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Every act or practice falling within the practice of medicine and surgery as defined not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Sec. 10. Section 71-1,206.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.01. For purposes of sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act, the definitions found in sections 71-1,206.02 to 71-1,206.10 shall be used.

Sec. 11. Section 71-1,206.13, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.13. The department shall receive and account for all money derived under sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act. The department shall remit the money monthly to the State Treasurer for credit to the Psychologists Licensing Fund, which fund is hereby created. Money received in such fund shall be used by the department or the board with the department's approval.

The secretary of the board shall be bonded under the blanket surety bond required by section 11-201. The premium for this bond shall be paid out of the fund.

All reimbursement for expenses shall be paid only from the fund. No money shall be paid from the General Fund for expenses or liabilities incurred by the board, and such expenses or liabilities shall not constitute a charge on any state funds other than the Psychologists Licensing Fund.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 12. Section 71-1,206.14, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.14. Unless otherwise expressly stated, references to licensed psychologists in the Nebraska Mental Health Commitment Act, in sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act, ~~the Nebraska Mental Health Commitment Act~~, and in section 44-513 shall mean only psychologists licensed under section 71-1,206.15 or 71-1,206.17 or subdivisions (2) and (3) of section 71-1,206.18 and shall not mean persons holding a special license under subdivision (1) of section 71-1,206.18 or under section 71-1,206.19 or holding a provisional license under sections 1 to 4 of this act.

Any reference to a person certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, and any equivalent reference under the law of another jurisdiction, including, but not limited to, certified clinical psychologist, health care practitioner in psychology, or certified health care provider, shall be construed to refer to a psychologist licensed under the Uniform Licensing Law except for persons licensed under subdivision (1) of section 71-1,206.18 or under section 71-1,206.19 or holding a provisional license under sections 1 to 4 of this act.

Sec. 13. Section 71-1,206.25, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.25. (1) Nothing in sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act shall be construed to prevent the teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultation to organizations or institutions if such teaching, research, or service does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services, without regard to the source or extent of payment for services rendered. Nothing in such sections shall prevent the provision of expert testimony by psychologists who are otherwise exempted by such sections. Persons holding a doctoral degree in psychology from an institution of higher education may use the title psychologist in conjunction with the activities permitted by this subsection.

(2) Nothing in sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act shall be construed to prevent members of other recognized professions that are licensed, certified, or regulated under the laws of this state from rendering services consistent with their professional training and code of ethics and within the scope of practice as set out in the statutes regulating their professional practice if they do not represent themselves to be psychologists.

(3) Nothing in sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act shall be construed to prevent duly recognized members of the clergy from functioning in their ministerial capacity if they do not represent themselves to be psychologists or their services as psychological.

(4) Nothing in sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act shall be construed to prevent persons who are certified as school psychologists by the State Board of Education from using the title school psychologist and practicing psychology as defined in such sections if such practice is restricted to regular employment within a setting under the jurisdiction of the State Board of Education. Such individuals shall be employees of the educational setting and not independent contractors providing psychological services to educational settings.

(5) Nothing in sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act shall be construed to prevent any of the following persons from engaging in activities defined as the practice of psychology if they do not represent themselves by the title psychologist, if they do not use terms other than psychological trainee, psychological intern, psychological resident, or psychological assistant to refer to themselves, and if they perform their activities under the supervision and responsibility of a psychologist in accordance with the rules and regulations of the board:

(a) A matriculated graduate student in psychology whose activities constitute a part of the course of study for a graduate degree in psychology at an institution of higher education;

(b) An individual pursuing postdoctoral training or experience in psychology, including persons seeking to fulfill the requirements for licensure under sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act; or

(c) An individual with a master's degree in clinical, counseling, or educational psychology or an educational specialist degree in school psychology who administers and scores and may develop interpretations of psychological testing under the supervision of a psychologist. Such individuals shall be deemed to be conducting their duties as an extension of the legal and professional authority of the supervising psychologist and shall not independently provide interpretive information or treatment recommendations to clients or other health care professionals prior to obtaining appropriate supervision. The board may adopt and promulgate rules and regulations governing the conduct and supervision of persons referred to in this subdivision, including the number of such persons that may be supervised by a licensed psychologist. Persons who have carried out the duties described in this subdivision as part of their employment in institutions accredited by the Department of Health and Human Services, the State Department of Education, or the Department of Correctional Services for a period of two years prior to September 1, 1994, may use the title psychologist associate in the context of their employment in such settings. Use of the title shall be restricted to duties described in this subdivision, and the title shall be used in its entirety. Partial or abbreviated use of the title and use of the title beyond what is specifically authorized in this subdivision shall constitute the unlicensed practice of psychology.

Sec. 14. Section 71-1,206.27, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.27. It shall be a violation of sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act for any person not licensed in accordance with such sections to represent himself or herself as a psychologist. It shall be a violation of such sections for any person not licensed in accordance with such sections to engage in the practice of psychology whether practicing as an individual, firm, partnership, limited liability company, corporation, agency, or other entity.

Any person who represents himself or herself as a psychologist in violation of such sections or who engages in the practice of psychology in violation of such sections shall be guilty of a Class II misdemeanor. Each day of violation shall constitute a separate offense. Any person filing or attempting to file, as his or her own, a diploma or license of another or a forged affidavit of identification shall be guilty of a Class IV felony.

It shall be unlawful for a person whose license to practice psychology has been suspended or revoked to practice psychology in this state. The board may issue, with or without reexamination, a new license to such a person whenever it deems such course safe and just.

Sec. 15. Section 71-1,206.28, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.28. The Attorney General, acting on behalf of the department, or the local county attorney may apply to the district court in the county in which a violation of sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act is alleged to have occurred for an order enjoining or restraining the commission or continuance of the acts complained of. The court may grant such temporary or permanent injunction or restraining order, without bond, as it deems just and proper. The remedy provided by this section shall be in addition to, and independent of, any other remedies available for the enforcement of the Uniform Licensing Law.

Sec. 16. Section 71-1,206.29, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.29. The confidential relations and communications between psychologists and their clients and patients shall be on the same basis as those between physicians and their clients and patients as provided in section 27-504.

In judicial proceedings, whether civil, criminal, or juvenile, in legislative and administrative proceedings, and in proceedings preliminary and ancillary thereto, a client or patient, or his or her legal guardian or personal representative, may refuse to disclose or may prevent the disclosure of confidential information, including information contained in administrative records, communicated to a psychologist, or to a person reasonably believed by the client or patient to be a psychologist, or the psychologist's or person's agents, for the purpose of diagnosis, evaluation, or treatment of any mental and emotional disorder. In the absence of evidence to the contrary, the psychologist shall be presumed to be authorized to claim the privilege on the client's or patient's behalf.

This privilege may not be claimed by the client or patient, or on his or her behalf by authorized persons, in the following circumstances:

- (1) When abuse or harmful neglect of children, the elderly, or disabled or incompetent individuals is known or reasonably suspected;
 - (2) When the validity of a will of a former client or patient of the psychologist is contested;
 - (3) When such information is necessary for the psychologist to defend against a malpractice action brought by the client or patient;
 - (4) When an immediate threat of physical violence against a readily identifiable victim is disclosed to the psychologist;
 - (5) When an immediate threat of self-inflicted injury is disclosed to the psychologist;
 - (6) When the client or patient, by alleging mental or emotional damages in litigation, puts his or her mental state in issue;
 - (7) When the client or patient is examined pursuant to court order;
 - (8) When the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the client or patient or any other cause of action arising out of the professional relationship; or
 - (9) In the context of investigations and hearings brought by the client or patient and conducted by the board, when violations of sections 71-1,206.01 to 71-1,206.31 and sections 1 to 4 of this act are at issue.
- Sec. 17. Original sections 43-129, 43-146.03, 71-1,206.01, 71-1,206.13, 71-1,206.14, 71-1,206.25, 71-1,206.27, 71-1,206.28, and 71-1,206.29, Reissue Revised Statutes of Nebraska, and sections 71-101, 71-147, and 71-1,103, Revised Statutes Supplement, 1998, are repealed.